

United States Bankruptcy Court  
Eastern District of Missouri

IN re Paul Wojciechowski et al

Debtor ) 16-42442

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Susan H Mello et al

Plaintiffs

v

Paul Wojciechowski et al

Defendants 16- 04179

Creditor/s / Plaintiffs' Memo of law on the Motions to revoke in 42442 and on the preclusive effect in 4179 where in order for there to have same proper procedures must have been followed and a full right to be heard and submits that

1 As raised in the Motions it was error under Rule 3015 for the court to proceed on good faith objections without a proper evidentiary hearing .

This is especially so where rule 3015 directly provides an objection is governed by rule 9014 that requires evidence on good faith objections and makes it clear a court may proceed without evidence when no objection is made ( which would be superfluous if the court had the option anyway to proceed without evidence court may proceed without a full evidentiary hearing.

Rule 3015 further mandates there is to be an evidentiary hearing stating where an issue of good faith is raised :

f) Objection to Confirmation; Determination of Good Faith in the Absence of an Objection. An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, before

confirmation of the plan. An objection to confirmation is governed by Rule 9014. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues,.

As such rule 3015 confirms it is proper the order be revoked , for relief from same under rule 60b ( rule 9024) where rule 60b provides there should be relief from a judgment when On motion and just terms, the court may relieve a party or its legal representative from a final

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

2. Rule 3015 further confirms there should be no preclusive effect and relief from the judgment where as in the Code rule 3015 confirms all creditors should have advance notice of any plan . Here where changes to the plan were made only at the in court hearing, it denied Creditor and others. The same rule sets out :

(d) Notice and Copies. The plan or a summary of the plan shall be included with each notice of the hearing on confirmation mailed pursuant to Rule 2002. If required by the court, the debtor shall furnish a sufficient number of copies to enable the clerk to include a copy of the plan with the notice of the hearing.

(e) Transmission to United States Trustee. The clerk shall forthwith transmit to the United States trustee a copy of the plan and any modification thereof filed pursuant to subdivision (a) or (b) of this rule.

(f) Objection to Confirmation; Determination of Good Faith in the Absence of an Objection. An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, before confirmation of the plan.

Here there was no notice or service of the change , or such notice with an actual modification of the plan as noted in the transcript. And it would be unfair for there to be a preclusive effect when there was no notice or chance to address the modified plan .

Respectfully submitted,

/s/ Susan H Mello

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Proper and attorney for Susan H Mello LL

Certificate of service

The undersigned certifies on 6/30/2017 through the court ecf system she served A Redden and J Wilson/ D Daugherty Trustee

and to her knowledge there is no one not on the ecf system who needs to be served with the date of filing and thus the date of service July 7 , 2017 /s/ Susan H Mello